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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF ARIZONA**

8 Mark Campbell,

9 Plaintiff,

10 v.

11 J. Chaves, et al.,

12 Defendant.

CR 04-78 TUC DCB

ORDER

13 On November 29, 2005, this Court denied Defendants Hunt and Hardesty summary
14 judgment. On December 27, 2005, the Defendants filed a Motion for Reconsideration
15 reasserting they had no involvement in the affairs forming the basis of Plaintiff's Bivens
16 action. Defendants argue that Co-Defendant GEO Group's payment to the Plaintiff in
17 October 4, 2005 represents payment for the loss of property and associated costs. (Motion
18 to Reconsider, Ex. A: Scroggin Affidavit at 2.)

19 The Court was aware of GEO Group's payment to Plaintiff for the lost property at
20 the time it ruled against Defendants Hunt and Hardesty. (See Order filed November 29, 2005
21 at 12.) Defendants' Motion for Reconsideration ignores Plaintiff's claims that they either
22 failed to have policies and procedures, or failed to follow policies and procedures, for
23 resolving losses of property by inmates being transferred from one facility to another, when
24 one facility is a private contract facility. *Id.* at 6-9, 12.

25 At the outset, the Court notes that motions to reconsider are appropriate only in rare
26 circumstances:

27 The motion to reconsider would be appropriate where, for example, the court
28 has patently misunderstood a party, or has made a decision outside the
adversarial issues presented to the court by the parties, or has made an error

1 not of reasoning but of apprehension. A further basis for a motion to
2 reconsider would be a controlling or significant change in the law or facts
since the submission of the issue to the court. Such problems rarely arise and
the motion to reconsider should be equally rare.

3 *Above the Belt, Inc. v. Mel Bohannon Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983); *see*
4 *also, Sullivan v. Faras-RLS Group, Ltd.*, 795 F. Supp. 305, 308-09 (D. Ariz. 1992).

5 "The purpose of a motion for reconsideration is to correct manifest errors of law or
6 fact or to present newly discovered evidence." *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909
7 (3rd Cir. 1985), *cert. denied*, 476 U.S. 1171 (1986).

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16 fact or to present newly discovered evidence." *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909
17 (3d Cir. 1985), *cert. denied*, 476 U.S. 1171 (1986). A motion for reconsideration should not
18 be used to ask a court "to rethink what the court had already thought through--rightly or
19 wrongly". *Above the Belt, Inc.*, 99 F.R.D. at 101; *See Refrigeration Sales Co. v. Mitchell-*
20 *Jackson, Inc.*, 605 F. Supp. 6, 7 (N.D. Ill. 1983). Arguments that a court was in error on the
21 issues it considered should be directed to the court of appeals. *Id.* at 7.

22 Motions to reconsider are generally treated as motions to alter or amend the
23 judgment under Federal Rules of Civil Procedure ("Rule") 59(e). *See In re Agric. Research*
24 *& Tech. Group, Inc.*, 916 F.2d 528, 542 (9th Cir. 1990); *MGIC Indem. Corp. v. Weisman*,
25 803 F.2d 500, 505 (9th Cir. 1986). A motion to amend a judgment based on arguments that
26 could have been raised, but were not raised, before judgment was entered may not properly
27

1 be granted. 11 Wright, Miller & Kane, Federal Practice and Procedure: Civil 2nd § 2810.1
2 at 127-28; *Demasse v. ITT Corporation*, 915 F. Supp. 1040, 1048 (Ariz. 1995) (a Rule 59(e)
3 motion may not be used to raise arguments or present evidence that could have been raised
4 or presented prior to judgment); *Williams v. Poulos*, 11 F.3d 271, 289 (1st Cir. 1993) (proper
5 to deny Rule 59(e) request for relief not requested in amended complaint).

6 Alternatively, a court can construe a motion to reconsider as a Rule 60 motion for
7 relief from a judgment or order. Under Rule 60, a party can obtain relief from a court order
8 for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
9 discovered evidence which by due diligence could not have been discovered in time to move
10 for a new trial under Rule 59(b); (3) fraud; (4) the judgment is void; (5) the judgment has
11 been satisfied; (6) any other reason justifying relief from the operation of the judgment. Fed.
12 R. Civ. P. 60(b).

13 The Court has reviewed Defendants' Motion to Reconsider and its Order entered on
14 November 29, 2005. The facts and circumstances which caused this Court to rule against
15 Defendants have not changed. The facts and circumstances surrounding Plaintiffs' claims
16 against Defendants Hardesty and Hunt have not changed since this Court's Order concerning
17 these matters; there are no new facts which were discovered since the Court's disposition of
18 the motion for summary judgment. There is no manifest error of law. There is no basis
19 under Rule 59 or Rule 60 for reconsideration.

20 **Accordingly,**

21 **IT IS ORDERED** that Plaintiffs' Motion for Reconsideration (document 45) is
22 DENIED.

23 **IT IS FURTHER ORDERED** that within five days of the filing date of this Order
24 the Defendants shall supplement their status report regarding the progress of Plaintiff's

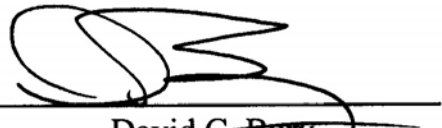
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1 administrative claim. It appears that he filed it on December 20, 2005, by mailing a BP9
2 form to the Warden at Safford FCI.

3 DATED this 11th day of January, 2006.

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David C. Bury
United States District Judge